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Joseph M. Koenig JR.

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WOOD, PHILLIPS, KATZ, CLARK & MORTIMER
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EXAMINER

RACHUBA, MAURINA T

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JOSEPH M. KOENIG, JR.

Appeal 2009-014254
Application 10/692,703
Technology Center 3700

Before: WILLIAM F. PATE III, JOHN C. KERINS, and
STEVEN D. A. MCCARTHY, *Administrative Patent Judges*.

PATE III, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF CASE

Appellant appeals under 35 U.S.C. § 134 from the rejection of claims 1-12. We have jurisdiction under 35 U.S.C. § 6(b). We reverse and enter a NEW GROUND OF REJECTION pursuant to our authority under 35 U.S.C. § 41.50(b).

The claims are directed to a sanding block. Claim 1, reproduced below, is illustrative of the claimed subject matter:

1. A sanding block comprising an abrasive grit bonded to a flexible, compressible, polymeric foam core, the sanding block conforming, when viewed macroscopically before the sanding block becomes worn, substantially to a block having two expansive sides and two adjacent sides, wherein a given one of the expansive sides is abrasive, wherein the given one of the expansive sides has two opposite edges, at each of which one of the adjacent sides adjoins the given one of the expansive sides, wherein a given one of the opposite edges, when viewed macroscopically before the sanding block becomes worn, is a sharp edge, and wherein the other one of the opposite edges, when viewed macroscopically before the sanding block becomes worn, is a curved edge.

REFERENCES

The prior art relied upon by the Examiner in rejecting the claims on appeal is:

Kingman	US 2,386,900	Oct. 16, 1945
Hays	US 2,553,254	May 15, 1951
Meyer	US 5,429,545	Jul. 4, 1995

REJECTIONS

Claims 1, 2, 5, and 9 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Kingman and Meyer. Ans. 3.

Claims 3, 4, 6-8, and 10-12 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Kingman, Meyer, and Hays. Ans. 4.

OPINION

We have carefully reviewed the rejections on appeal in light of the arguments of the Appellant and the Examiner. As a result of this review, we have reached the determination that the applied prior art does not establish the prima facie obviousness of the claims on appeal. Therefore the rejections on appeal are reversed. Additionally, we enter a NEW GROUND OF REJECTION of all claims on appeal under 37 C.F.R. § 41.50(b). Our reasons follow.

We agree with Appellant that the Examiner's proposed combination of Kingman and Meyer is not well founded. We agree with Appellant that Kingman utilizes a core of rigid material so that Kingman may be used for a scraping function. App. Br. 4. Therefore the replacement of the rigid core of Kingman with a soft, foam-like body as disclosed in Meyer would not have been obvious to one of ordinary skill. Since all the rejections on appeal are bottomed on the combination of Kingman and Meyer, the Examiner's rejections on appeal are reversed.

NEW GROUND OF REJECTION

Pursuant to our authority under 37 C.F.R. § 41.50(b), we enter a new ground of rejection. Claims 1-12 are rejected under 35 U.S.C. § 103 as unpatentable over the prior art sanding block disclosed on pages 1 and 2 of Appellant's Specification in view of Kingman and Hays.

The prior art sanding block disclosed in Appellant's Specification is described thusly:

As sold by Trim-Tex, Inc. of Lincolnwood, Illinois, and admitted here to constitute prior art, a sanding block of the second known type has abrasive grit bonded to a core, which is made of a flexible, compressible, polymeric foam. The sanding block is a six-sided block having two expansive sides, to each of which abrasive grit is bonded, two adjacent sides, to each of which abrasive grit is bonded, and two lateral sides, which do not have abrasive grit and at which the core is exposed. Each adjacent side meets each expansive side at two opposite edges. The sanding block has comparatively coarser, abrasive grit bonded to a given one of the expansive sides and to a given one of the adjacent sides and comparatively finer, abrasive grit bonded to the other one of the expansive sides and to the other one of the adjacent sides.

Spec. 1, l. 22 – Spec. 2, l. 7. This acknowledged prior art differs from the claimed subject matter in that it does not specifically disclose a sharp edge and an opposite curved edge.

Kingman, on the other hand discloses an abrasive block comprising one sharp-edged profile and three curved-edged profiles of different radii. As explained in Kingman, these profiles are designed to fit different surfaces that are to be abraded. Kingman 2, col. 2, ll. 7-63. In our view, Kingman clearly teaches that abrasive blocks for manual use can have sharp-edged or curved corner surfaces of either straight or curved profile to ideally match the surfaces designed to be manually abraded. *Id.* In our view, this is the use of a known technique taught by Kingman to improve a similar device, i.e., the prior art sanding block admitted in Appellant's Specification. We further note that Kingman teaches radiused edges of different sizes adapted to conform to the geometry of various curved intersecting surfaces. This is evidence of a recognition in the art that curved edges can be of different radii. Accordingly, one of ordinary skill would find the Appellant's

limitation of a $\frac{1}{8}$ th inch radius to be a matter of choice for one of ordinary skill in this art.

Finally, Hays teaches that it is old in the art to provide a sanding block with either an obtuse or an acute angle. *See* Figs. 1 and 2. Therefore Hays renders a sanding block with an acute angled edge of from 55 to 70 degrees *prima facie* obvious. Here again, this is a known technique or feature that can be used to improve an existing device with predictable results.

DECISION

The rejections on appeal under 35 U.S.C. § 103 are reversed.

A new rejection of claims 1-12 under 35 U.S.C. § 103, pursuant to 37 C.F.R. § 41.50(b) has been entered by the Board.

This decision contains a new ground of rejection pursuant to 37 C.F.R. § 41.50(b). 37 C.F.R. § 41.50(b) provides “[a] new ground of rejection pursuant to this paragraph shall not be considered final for judicial review.”

37 C.F.R. § 41.50(b) also provides that Appellant, WITHIN TWO MONTHS FROM THE DATE OF THE DECISION, must exercise one of the following two options with respect to the new ground of rejection to avoid termination of the appeal as to the rejected claims:

(1) Reopen prosecution. Submit an appropriate amendment of the claims so rejected or new evidence relating to the claims so rejected, or both, and have the matter reconsidered by the Examiner, in which event the proceeding will be remanded to the Examiner. . . .

(2) Request rehearing. Request that the proceeding be reheard under § 41.52 by the Board upon the same record. . . .

REVERSED; 37 C.F.R. § 41.50(b)

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